UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,670	07/13/2001	Phillip D. Purdy	UTSD:798US	4825

32425 7590 12/10/2007
FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN, TX 78701

EXAMINER	
MACNEILL, ELIZABETH	

ART UNIT	PAPER NUMBER
3767	

MAIL DATE	DELIVERY MODE
12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

CT

Office Action Summary	Application No.	Applicant(s)	
	09/905,670	PURDY, PHILLIP D.	
	Examiner	Art Unit	
	Elizabeth R. MacNeill	3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 November 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13,17-63 and 65-69* is/are pending in the application.

4a) Of the above claim(s) *29-63* is/are withdrawn from consideration.

5)☒ Claim(s) *1-3,7-11,13,21-24,27,28 and 65-69* is/are allowed.

6)☒ Claim(s) *4,12,17-20,25,26 and 64* is/are rejected.

7)☒ Claim(s) *5 and 6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 29-63 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9 June 2007.

2. Claims 1-3, 7-11, 13, 21-24, 27, 28, 65-69 are allowable. The restriction requirement of the various inventions and species, as set forth in the Office action mailed on 4 May 2005, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 9, 10, and 14-16, directed to invention no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 29-63, directed to another invention are withdrawn from consideration because they do not require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

3. Claims 1-3, 7-11, 13, 21-24, 27, 28, and 65-69 are allowed. The prior art does not teach or suggest advancing a device from the spinal subarachnoid space into the intracranial subarachnoid space in combination with the other limitations of the claims.

4. The indicated allowability of claims 4, 12, 17-20, 25, 26, and 64 is withdrawn in view of the new rejections below.

5. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 4,12, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al (US 6,436,091) in view of Barbut et al (US 6,379,331).

Harper teaches a method of navigating the subarachnoid space (at 920, Figs 15-17) comprising; percutaneously introducing a sufficiently flexible guidewire (656) into the spinal subarachnoid space at an entry location; introducing a device over the guidewire (cannula 650), the device having a first passageway to slidably receive, and work with, at least the guidewire, and the guidewire being positioned in the passageway (Fig 9b);

and advancing the device over the guidewire and within the spinal subarachnoid space at least more than 10 centimeters from the entry location (see tables Col 14).

Harper's device is used to place the catheter of an implantable infusion pump (610).

Harper does not disclose inducing hypothermia, altering the temperate of some brain tissue, or applying heat to tissue.

Barbut teaches using a catheter that is disposed in the subarachnoid space to cool and flush the CSF (which also contacts the brain, thereby cooling some brain tissue). Later, the CSF must be reheated to restore physiologic conditions to the patient.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the catheter of Harper to cool or heat the CSF since altering the temperature of the CSF has therapeutic benefits (such as during surgery or following spinal trauma, Col 1 line 15).

8. Claims 18 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al (US 6,436,091) in view of Keep et al (US 2004/0147433).

Harper teaches a method of navigating the subarachnoid space (at 920, Figs 15-17) comprising; percutaneously introducing a sufficiently flexible guidewire (656) into the spinal subarachnoid space at an entry location; introducing a device over the guidewire (cannula 650), the device having a first passageway to slidably receive, and work with, at least the guidewire, and the guidewire being positioned in the passageway (Fig 9b); and advancing the device over the guidewire and within the spinal subarachnoid space at least more than 10 centimeters from the entry location (see tables Col 14).

Harper's device is used to place the catheter of an implantable infusion pump (610).

Harper does not teach delivering a radioactive pellet.

Keep teaches that it is known in the art to deliver radioactive pellets to treat tumors (0017). These pellets could be delivered in a solution through the pumping device of Harper.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the pump of Harper to deliver radioactive pellets in order to treat tumors as taught by Keep.

9. Claim 19, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper et al (US 6,436,091) in view of Hofmann et al (US 6,330,466).

Harper teaches a method of navigating the subarachnoid space (at 920, Figs 15-17) comprising; percutaneously introducing a sufficiently flexible guidewire (656) into the spinal subarachnoid space at an entry location; introducing a device over the guidewire (cannula 650), the device having a first passageway to slidably receive, and work with, at least the guidewire, and the guidewire being positioned in the passageway (Fig 9b); and advancing the device over the guidewire and within the spinal subarachnoid space at least more than 10 centimeters from the entry location (see tables Col 14).

Harper's device is used to place the catheter of an implantable infusion pump (610).

Harper does not teach a detector for monitoring.

Hofmann teaches a probe/electrode capable of use in the nervous system which measures neuron activity.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the detector of Hofmann in order to monitor the patient's neurons

around the pump and quickly detect any adverse reactions to the implant, catheter, or medicament.

Response to Arguments

10. Applicant's arguments with respect to claims 4, 12, 17-20, 25, 26, and 64 have been considered but are moot in view of the new ground(s) of rejection.

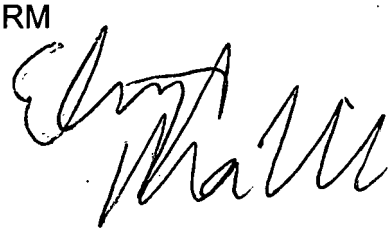
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM



KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER